

REMARKS

Claims 1-12 and 27-35 are pending and under current examination. In the Office Action¹, the Examiner:

- (a) rejected claims 1-3, 5, 9-12, and 27-35 under 35 U.S.C. § 103(a) as being unpatentable over Fu (U.S. Patent No. 6,834,182 B2) ("Fu") in view of Gigliotti et al. (European Patent App. Pub. No. 1 233 273 A2) ("Gigliotti");
- (b) rejected claims 4 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Fu in view of Gigliotti, and further in view of Quinn et al. (U.S. Patent No. 5,756,967) ("Quinn"); and
- (c) rejected claims 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Fu in view of Gigliotti, and further in view of Dent et al. (U.S. Patent No. 6,961,368 B2) ("Dent").

Applicants respectfully traverse these rejections for the following reasons.

Rejection of Claims 1-3, 5, 9-12, and 27-35 under 35 U.S.C. § 103(a):

Applicants request reconsideration and withdrawal of the rejection of claims 1-3, 5, 9-12, and 27-35 under 35 U.S.C. § 103(a) as being unpatentable over Fu in view of Gigliotti. The Examiner has not met the basic requirements for establishing a *prima facie* case of obviousness.

The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1395-97 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966)]. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. M.P.E.P. § 2143.

In the Office Action, the Examiner alleged that Fu teaches each element of Applicants' independent claim 1 except for Applicants' claimed "communication module for transmitting said at least one RF power signal measurement to a remote processing facility," as recited in

¹ The Office Action contains statements characterizing the related art and the claims. Regardless of whether any such statements are specifically identified herein, Applicants decline to automatically subscribe to any statements in the Office Action.

claim 1. *See* Office Action, p. 2. In an attempt to remedy this deficiency of Fu, the Examiner applied Gigliotti, and alleged that Gigliotti teaches the missing element of Fu. *See* Office Action, p. 3. Specifically, the Examiner alleged that “[a] person of ordinary skill in the art at the time the invention was made would find it obvious to modify Fu [with Gigliotti]” (*Id.*).

Any such modification of Fu, however, cannot render Fu unsatisfactory for its intended purpose, even if the Examiner argues that a combination of Fu and Gigliotti could be construed to teach all the claim elements of independent claim 1. *See* M.P.E.P. § 2143.01(V) (stating that “[i]f [a] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification”). Because the Examiner’s proposed modification of Fu with the teachings of Gigliotti would render Fu unsatisfactory for its intended purpose, there would be no suggestion or motivation to make the Examiner’s proposed modification. *See Id.*

For example, Fu is directed to radiotelephones, such as digital cellular telephones. *See* Fu, col. 1, ll. 7-10. Specifically, Fu discloses a “technique to calculate [an] ACPR [Adjacent Channel Power Ratio] in *real-time* in [a] mobile station, and to use the results of the calculation *to reduce the DC power consumption of the mobile station.*” Fu, col. 2, ll. 24-28 (emphases added). That is, the principle of Fu is to monitor an ACPR of a radiotelephone *within the radiotelephone in real-time*, so that the substantial margins built into the ACPR can be reduced, which will in turn *reduce the DC power consumption* of the radiotelephone. *See* Fu, col. 7, ll. 8-15.

Gigliotti, on the other hand, is directed to a device for monitoring electromagnetic fields from, for example, mobile telephony. *See* Gigliotti, Abstract, and col. 2, ll. 35-36. Gigliotti further discloses that the device can transmit data corresponding to the monitored electromagnetic fields to a remote station for monitoring. *See* Gigliotti, col. 4, ll. 28-36.

The Examiner alleges that it would have been obvious to modify Fu in order to transmit RF power signal measurements to a remote location, as taught by Gigliotti, to achieve “a high degree of flexibility of remotely monitoring the RF power signal, and/or further processing/analyzing the RF power signal as desired.” Office Action, p. 3.

In Fu, however, transmitting RF power signal measurements to a remote location would not only prevent measuring and processing signals *quickly and continuously in real-time*, it would also *increase* battery usage. Again, since the principle of Fu is to monitor an ACPR of a radiotelephone *in real-time* to *reduce* battery usage of the radiotelephone (see Fu, col. 7, ll. 8-15), the proposed modification would render Fu unsatisfactory for its intended purpose. That is, the Examiner’s proposed modification of Fu with the teachings of Gigliotti would render Fu unsatisfactory for its intended purpose, and there would be no suggestion or motivation to make the Examiner’s proposed modification. See M.P.E.P. § 2143.01(V).

In view of the reasoning presented above, Fu in view of Gigliotti, whether taken alone or in combination, does not render obvious independent claim 1, and a *prima facie* case of obviousness has not been established. Applicants submit that independent claim 1 should therefore be allowable.

Independent claims 11 and 12, while of different scope, recite elements similar to those of independent claim 1, and should also be allowable for the same reasons discussed with respect to claim 1. Dependent claims 2, 3, 5, 9, 10, and 27-35 depend either directly or indirectly from independent claims 1, 11, or 12, and should also be allowable at least by virtue of their respective dependence therefrom. Accordingly, Applicants request the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 1-3, 5, 9-12, and 27-35.

Remaining 35 U.S.C. § 103(a) Rejections of Claims 4 and 6-8:

Applicants request reconsideration and withdrawal of the remaining rejections of claims 4 and 6-8 under 35 U.S.C. § 103(a) as being unpatentable over Fu in view of Gigliotti, and further in view of Quinn or Dent. As discussed in the previous section, Fu in view of Gigliotti does not render obvious at least Applicants' independent claim 1. Claims 4 and 6-8 depend from independent claim 1 and therefore are not obvious for the same reasons discussed with respect to claim 1. Moreover, the additional cited references, Quinn and Dent, taken alone or in combination with Fu and/or Gigliotti, also fail to demonstrate a *prima facie* case of obviousness.

Further, the additional cited references, Quinn and Dent, taken alone or in combination with Fu or Gigliotti, also fail to cure the missing elements of Fu admitted by the Examiner and discussed in the previous section. Specifically, Quinn is directed to a welding process (*see Quinn*, Abstract) and appears to have been only relied on by the Examiner for its disclosure of data processing methods. *See* Office Action, p. 7. Moreover, Dent is generally related to circuitry and antennas contained within mobile phones (*see Dent*, Abstract) and appears to have only been relied on by the Examiner for its disclosure of processing multiple frequency bands. *See* Office Action, p. 8.

Accordingly, because the prior art of record fails to teach every element recited in independent claim 1, and because there would be no suggestion or motivation to make the Examiner's proposed modification to Fu, no *prima facie* case of obviousness has been established for dependent claims 4 and 6-8. Claims 4 and 6-8 should therefore be allowable. Accordingly, Applicants request withdrawal of the 35 U.S.C. § 103(a) rejections of dependent claims 4 and 6-8.

Conclusion:

Applicants request reconsideration of the application and withdrawal of the rejections. Pending claims 1-12 and 27-35 are in condition for allowance, and Applicants request a favorable action.

If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 29, 2008

By: 

David M. Longo
Reg. No. 53,235

/direct telephone: (571) 203-2763/